

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC,
AT: JAMKHANDI.**

PRESENT

Smt.Shreedeви,
B.Com LLB (Spl),
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this the 04th day of June – 2025

O.S. No.20/2021

1. Shri.Prabhu S/o Shivalingappa Mahar @ Talawar,
Age: 58 years, Occ: Agriculture,
R/o. Hanchanal-Kadapatti village,
Tq: Jamkhandi, Dist: Bagalkot.

.....Plaintiff.

(By Shri.S.B.K., Advocate)

- Vs -

1. Shri.Dundappa S/o Peerappa Mahar @ Talawar,
Age: 50 years, Occ: Agriculture,
R/o. Hanchanal-Kadapatti village,
Tq: Jamkhandi, Dist: Bagalkot
and Others.

.....Defendants.

(D-1 - Dead)

(D-1A and D-1C – By Shri.U.S.S., Advocate)

(D-2, D-4, D-7 to D-11 - By Shri.U.S.S. Adv)

(D-1B and D-1D - Exparte)

I.A.No.I to III

1. Shri.Prabhu S/o Shivalingappa Talawar.

.....Applicants/Original Plaintiff.

- Vs -

- 1A. Smt.Mala W/o Dundappa Talawar,
Age: 48 years, Occ: Household work,
R/o. Kadapatti village,
Tq: Jamkhandi, Dist: Bagalkot.
- 1B. Smt.Deepa D/o Satyappa Kambale,
Age: 30 years, Occ: Household work,
R/o. Kulhalli village,
Tq: Rabakavi-Banahatti, Dist: Bagalkot.
- 1C. Shri.Chetan S/o Dundappa Talawar,
Age: 48 years, Occ: Coolie,
R/o. Kadapatti village,
Tq: Jamkhandi, Dist: Bagalkot.
- 1D. Smt.Kavita W/o Shivu Gubachi,
Age: 25 years, Occ: Household work,
R/o. Hanagandi village,
Tq: Rabakavi-Banahatti, Dist: Bagalkot.

.....Opponents/LRs of deceased Defendant No.1
proposed defendants No.1A to 1D.

Sl. No.	Details	Particulars
1	Provision under which the application is filed	1) Under Order XXII Rule4 R/w Section 151 of CPC. 2) Under Section 5 of the Limitation Act and 3) I.A. No.III under Order 22 Rule 9 R/w Section 151 of the CPC.

2	Relief sought for	1) Bring the legal representatives of deceased. 2) Setting aside the abatement order. 3) Condonation of delay
3	The date on which the application is filed	03-09-2022 03-09-2022 03-09-2022
4	Number of the applications	I.A.No.I I.A.No.II I.A.No.III
5	The date on which the objections are filed by the different opponent/s	- - -
6	The date on which the orders were passed on the said application/s.	04-06-2025

COMMON ORDER ON IA.NO.I to III

The plaintiff has filed I.A. No.I under Order 22 Rule 4 R/w Section 151 of the CPC, I.A. No.II under Section 5 of the Limitation Act and I.A. No.III under Order 22 Rule 9 R/w Section 151 of the CPC, seeking to bring the legal representatives of the deceased defendant No.1 on record and for setting aside the order of abatement passed against

defendant No.1 and for condonation of delay in filing the necessary applications, in the interest of justice.

2. In the accompanying affidavit, it is submitted that the plaintiff has filed this suit for partition and separate possession and declaration against the defendants in respect of the suit schedule properties. Defendant No.1 died on 21.04.2021 at Sri.Bhagyavanti Multispecialty Hospital, leaving behind his wife, two daughters and a son as his legal heirs. The proposed defendants are the only legal heirs of the deceased Defendant No.1. Apart from these legal representatives, there are no other persons entitled to succeed to his estate. The right to sue survives in their favour, and as such, they are entitled to be brought on record. Hence, it is necessary to bring the legal heirs of the deceased defendant No.1 on record, in the interest of justice.

3. Per contra, the defendants have not filed any objection to the said applications.

4. Heard and perused the material placed before this court. The following points arise for determination:

P O I N T S

1. Whether the plaintiff has made out sufficient grounds to allow the IA.No.I to III as prayed for ?
 2. What Order ?
5. My answer to the above points are as under;

Point No.1:- In the Affirmative.

Point No.2:- As per final order for the following;

:: R E A S O N S ::

6. **Point No.1:-** The entire facts of the I.A. No.1 to 3 have already been narrated at the inception of this order; hence, repetition is avoided here. In W.P. No.35603/2011, the Hon'ble High Court of Karnataka at Bengaluru observed that the prayers for bringing legal representatives on record, condoning delay, and setting aside abatement could be made in a single application. Therefore, the applications filed by the plaintiff are maintainable.

7. In this suit, it is necessary to bring the legal heirs of the deceased defendant No.1 on record for the proper and effectual adjudication of the matter in dispute. As per the

procedure of law, steps to bring the legal representatives of a deceased party on record must be taken within 90 days from the date of death. It is a well-settled principle of law that it is primarily for the plaintiff in a suit to identify the parties against whom he has a grievance. In the present application, the relationship between the proposed defendants and the deceased Defendant No.1 is not disputed.

8. In this suit, the question of whether an individual is a proper or necessary party depends upon the nature of the relief claimed and the right or interest projected by the person seeking to be impleaded. The plaintiff is the *dominus litis*. However, it is also the duty of the Court to ensure that, for the purpose of deciding the real matter in dispute, any person who is a necessary party is brought on record. Accordingly, the Court may direct that such a person be brought on record as the legal representative of a deceased party. This Court considers two essential aspects when determining whether a person is a necessary party:

1. *There must be a right to some relief against such person in relation to the controversy involved in the proceedings; and*
2. *No effective decree can be passed in the absence of such party.*

9. In the present case, the plaintiff has filed the application promptly upon acquiring knowledge of the death of defendant No.1. The plaintiff has satisfactorily explained the delay by stating that he was preoccupied with domestic issues and, due to the unavoidable circumstances arising from the COVID-19 pandemic, he was unable to contact his counsel to provide the necessary information regarding the names and addresses of the legal representatives of the deceased defendant No.1.

10. Rule 4 of Order 22 of CPC mandates that if a defendant dies during the pendency of the suit, his legal heirs must be brought on record, as they are necessary parties to the suit. In the present case, the plaintiff has filed a suit for partition and separate possession. During the trial, defendant No.1 passed away and thereafter, the plaintiff filed the present applications. Since the suit is one for partition and separate

possession, the right to sue survives against the legal representatives of the deceased defendant No.1. Hence, this Court is of the opinion that the delay in filing the applications for bringing the legal representatives on record and for setting aside the abatement of the suit is justified. Accordingly, this court answers the **Point No.1 in the Affirmative.**

11. Point No.2:- In the aforesaid reasons, this court proceeds to pass the following;

: O R D E R :

The I.A. No.I to III filed by the plaintiff Under Order 22 Rule 4, U/Sec.5 of Limitation Act and Under Order 22 Rule 9 R/w Section 151 of CPC are hereby allowed.

The order of abatement passed against defendant No.1 is hereby set aside and the delay in filing the necessary application is condoned. Legal

representatives of defendant No.1 are permitted to contest the case.

Plaintiff is directed to amend the plaint within 14 days and furnish amended plaint by 18.06.2025.

No order as to cost.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **04th day of June - 2025**)*

**Sd/-
(Smt.Shreedevi),
Addl. Civil Judge & JMFC,
Jamkhandi.**